

Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

The Authority prepared Proposal P1035 – Gluten Claims about Foods containing Alcohol to amend Standard 1.2.7 – Nutrition, Health and Related Claims to permit nutrition content claims about gluten in relation to food containing more than 1.15% alcohol by volume. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft variation of Standards 1.2.7 and 1.2.8.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation¹, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

2. Purpose

The Authority has approved a draft variation to Standard 1.2.7 to permit nutrition content claims about gluten in relation to food containing more than 1.15% alcohol by volume.

The Authority has also approved a draft variation to Standards 1.1.2, and 1.2.8 to provide an exemption from the requirement to provide nutrition information if a nutrition content claim about gluten content, using the descriptor 'free' or a similar descriptor, is made in relation to an alcoholic beverage standardised in Standards 2.7.2 to 2.7.5 or a beverage containing no less than 0.5% alcohol by volume.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1035 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 14 November 2014 for a six-week consultation period.

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

Targeted consultation was also carried out with key stakeholders regarding an exemption from the requirement to declare a nutrition information panel if a gluten claim is made about a beverage containing alcohol.

A Regulation Impact Statement was not required because the proposed variations to Standards 1.1.2, 1.2.7 and 1.2.8 are likely to have a minor impact on business and individuals.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

6. Variation

Item [1] amends Standard 1.1.2.

Item [1.1] amends the definition of 'claim requiring nutrition information' in subsection 1.1.2—2(3) to provide that a prescribed beverage gluten free claim is not a claim requiring nutrition information. The effect of the amendment is to exempt prescribed beverages from the requirements for nutrition information when a prescribed beverage gluten free claim is made.

Item [1.2] adds definitions of the terms 'prescribed beverage' and 'prescribed beverage gluten free claim' to subsection 1.1.2—2(3).

A prescribed beverage is a standardised alcoholic beverage (beer, brandy, cider, fruit wine, fruit wine product, liqueur, mead, perry, spirit, vegetable wine, vegetable wine product, wine or wine product) or a beverage containing no less than 0.5% alcohol by volume.

A prescribed beverage gluten free claim is a nutrition content claim in relation to the gluten content of a prescribed beverage that uses the descriptor 'free' or a synonym of such a descriptor.

Item [2] amends section 1.2.7—4 of Standard 1.2.7 by inserting a reference to gluten content in the section. The effect of the amendment is to permit nutrition content claims about gluten content to be made in relation to a food that contains more than 1.15% alcohol by volume.

Any nutrition content claim made about the gluten content of a food would have to be made in accordance with the conditions specified in section 1.2.7—12 and Schedule S4—3.

Item [3] omits the definition of claim requiring nutrition information from the first Note to section 1.2.8—4 and replaces it with a new definition, as a consequence of the amendments made to this definition by item [1.1].